

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

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6 CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

11 CONSUMER ADVOCACY GROUP, INC.,
12 in the public interest,

13 Plaintiff,

14 v.

15 BEST BUY CO., INC., a Minnesota
16 Corporation
17 BESTBUY.COM LLC, a Delaware Limited
18 Liability Company
19 BEST BUY STORES, L.P, a Virginia
20 Limited Partnership
21 BBY SOLUTIONS, INC., a Minnesota
22 Corporation
23 and DOES 1-20,

24 Defendants.

CASE NO. **20STCV21116**

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

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2 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
3 against defendants BEST BUY CO., INC., BESTBUY.COM LLC, BEST BUY STORES L.P,
4 BBY SOLUTIONS, INC., and DOES 1-20 as follows:

5 **THE PARTIES**

- 6 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
7 organization qualified to do business in the State of California. CAG is a person within
8 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
9 as a private attorney general, brings this action in the public interest as defined under
10 Health and Safety Code Section 25249.7, subdivision (d).
11 2. Defendant BEST BUY CO., INC., (“BEST BUY”) is a Minnesota Corporation doing
12 business in the State of California at all relevant times herein.
13 3. Defendant BESTBUY.COM LLC, (“BESTBUY.COM”) is a Delaware Limited
14 Liability Company doing business in the State of California at all relevant times herein.
15 4. Defendant BEST BUY STORES, L.P, (“BEST BUY STORES”) is a Virginia Limited
16 Partnership doing business in the State of California at all relevant times herein.
17 5. Defendant BBY SOLUTIONS, INC., (“BBY”) is a Minnesota Corporation doing
18 business in the State of California at all relevant times herein.
19 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
20 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
21 this Complaint to allege their true names and capacities when ascertained. Plaintiff is
22 informed, believes, and thereon alleges that each fictitiously named defendant is
23 responsible in some manner for the occurrences herein alleged and the damages caused
24 thereby.
25 7. At all times mentioned herein, the term “Defendants” includes BEST BUY,
26 BESTBUY.COM, BEST BUY STORES, BBY and DOES 1-20.
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- 1 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
2 times mentioned herein have conducted business within the State of California.
- 3 9. Upon information and belief, at all times relevant to this action, the Defendants,
4 including DOES 1-20, was an agent, servant, or employee of each of the other
5 Defendant. In conducting the activities alleged in this Complaint, each of the
6 Defendants was acting within the course and scope of this agency, service, or
7 employment, and was acting with the consent, permission, and authorization of each of
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint
9 were ratified and approved by every other Defendant or their officers or managing
10 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
11 the alleged wrongful conduct of each of the other Defendants.
- 12 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, the
13 Defendant was a person doing business within the meaning of Health and Safety Code
14 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
15 employees at all relevant times.

JURISDICTION

- 17 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
19 those given by statute to other trial courts. This Court has jurisdiction over this action
20 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
21 violations of Proposition 65 in any Court of competent jurisdiction.
- 22 12. This Court has jurisdiction over Defendants named herein because Defendants either
23 reside or are located in this State or are foreign corporations authorized to do business
24 in California, are registered with the California Secretary of State, or who do sufficient
25 business in California, have sufficient minimum contacts with California, or otherwise
26 intentionally avail themselves of the markets within California through their
27 manufacture, distribution, promotion, marketing, or sale of their products within
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1 California to render the exercise of jurisdiction by the California courts permissible
2 under traditional notions of fair play and substantial justice.

3 13. Venue is proper in the County of Los Angeles because one or more of the instances of
4 wrongful conduct occurred, and continues to occur, in the County of Los Angeles
5 and/or because Defendants conducted, and continue to conduct, business in the County
6 of Los Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

8 14. In 1986, California voters approved an initiative to address growing concerns about
9 exposure to toxic chemicals and declared their right “[t]o be informed about exposures
10 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
11 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
12 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
13 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
14 from contamination, to allow consumers to make informed choices about the products
15 they buy, and to enable persons to protect themselves from toxic chemicals as they see
16 fit.

17 15. Proposition 65 requires the Governor of California to publish a list of chemicals known
18 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
19 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
20 over 700 chemicals and chemical families. Proposition 65 imposes warning
21 requirements and other controls that apply to Proposition 65-listed chemicals.

22 16. All businesses with ten (10) or more employees that operate or sell products in
23 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
24 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
25 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear
26 and reasonable” warnings before exposing a person, knowingly and intentionally, to a
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

- 1 17. Proposition 65 provides that any person "violating or threatening to violate" the statute
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
3 25249.7. "Threaten to violate" means "to create a condition in which there is a
4 substantial probability that a violation will occur." *Health & Safety Code* §
5 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day
6 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 7 18. Plaintiff identified certain practices of manufacturers and distributors of Plastic Suction
8 Cup Camera Mounts and Suction Cups of exposing, knowingly and intentionally,
9 persons in California to Bis (2-ethylhexyl) phthalate ("DEHP") in such products
10 without first providing clear and reasonable warnings of such to the exposed persons
11 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
12 practice.
- 13 19. On October 1, 1988, the Governor of California added DEHP to the list of chemicals
14 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
15 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
16 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
17 became fully subject to Proposition 65 warning requirements and discharge
18 prohibitions.
- 19 20. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
20 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
21 *Regs.* tit. 27, § 27001(c)). DEHP is known to the State to cause developmental, and
22 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
23 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
24 the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65
25 warning requirements and discharge prohibitions.

26 **SATISFACTION OF PRIOR NOTICE**

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- 1 21. On or about September 10 2019 Plaintiff gave notice of alleged violations of Health and
2 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
3 private action to BEST BUY, BEST BUY STORES, BBY and to the California
4 Attorney General, County District Attorneys, and City Attorneys for each city
5 containing a population of at least 750,000 people in whose jurisdictions the violations
6 allegedly occurred, concerning the Plastic Suction Cup Camera Mounts.
- 7 22. On or about March 17, 2020 Plaintiff gave notice of alleged violations of Health and
8 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
9 private action to BEST BUY, BESTBUY.COM, BEST BUY STORES, BBY and to the
10 California Attorney General, County District Attorneys, and City Attorneys for each
11 city containing a population of at least 750,000 people in whose jurisdictions the
12 violations allegedly occurred, concerning Suction Cups
- 13 23. Before sending the notice of alleged violations, Plaintiff investigated the consumer
14 products involved, the likelihood that such products would cause users to suffer
15 significant exposures to DEHP, and the corporate structure of each of the Defendants.
- 16 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
17 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
18 for Plaintiff who executed the certificate had consulted with at least one person with
19 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,
20 the subject Proposition 65-listed chemical of this action. Based on that information, the
21 attorney for Plaintiff who executed the Certificate of Merit believed there was a
22 reasonable and meritorious case for this private action. The attorney for Plaintiff
23 attached to the Certificate of Merit served on the Attorney General the confidential
24 factual information sufficient to establish the basis of the Certificate of Merit.
- 25 25. Plaintiff's notice of alleged violations also included a Certificate of Service and a
26 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
27 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
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1 26. Plaintiff is commencing this action more than sixty (60) days from the dates that
2 Plaintiff gave notice of the alleged violations to BEST BUY, BESTBUY.COM, BEST
3 BUY STORES, BBY, and the public prosecutors referenced in Paragraphs 21 and 22.

4 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,
5 nor any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

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8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against BEST BUY, BEST**
10 **BUY STORES, BBY, and DOES 1-10 for Violations of Proposition 65, The Safe**
11 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
12 **25249.5, *et seq.*)**

13 **Go Pro Accessories**

14 28. Plaintiff repeats and incorporates by reference paragraphs 1 through 27 of this
15 complaint as though fully set forth herein.

16 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Plastic Suction Cup Camera Mounts (“Camera
18 Mounts”), including but not limited to: “SUCTION CUP;” “GOPRO;” “Made in
19 China;” “GoPro, Inc.,” “gopro.com/patents;” “3000 Clearview Way, San Mateo, CA
20 94402;” “SKU#: AUCMT-302;” “120119P;” “8 18279 01069 5”

21 30. Camera Mounts contain DEHP.

22 31. Defendants knew or should have known that DEHP has been identified by the State of
23 California as a chemical known to cause cancer, developmental, and male reproductive
24 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
25 were also informed of the presence of DEHP in Camera Mounts within Plaintiff's notice
26 of alleged violations further discussed above at Paragraph 21.

27 32. Plaintiff's allegations regarding Product concerns “[c]onsumer products exposure[s],”
28 which “is an exposure that results from a person’s acquisition, purchase, storage,
consumption, or other reasonably foreseeable use of a consumer good, or any exposure

1 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.

2 Camera Mounts is a consumer product, and, as mentioned herein, exposures to DEHP
3 took place as a result of such normal and foreseeable consumption and use.

4 33. Plaintiff is informed, believes, and thereon alleges that between September 10, 2016
5 and the present, each of the Defendants knowingly and intentionally exposed California
6 consumers and users of Camera Mounts, which Defendants manufactured, distributed,
7 or sold as mentioned above, to DEHP, without first providing any type of clear and
8 reasonable warning of such to the exposed persons before the time of exposure.
9 Defendants have distributed and sold Camera Mounts in California. Defendants know
10 and intend that California consumers will use Camera Mounts, thereby exposing them
11 to DEHP. Defendants thereby violated Proposition 65.

12 34. The principal routes of exposure were through dermal contact, inhalation, and ingestion.
13 Persons sustain exposures by using, carrying, or handling the Camera Mounts without
14 wearing gloves or by touching bare skin or mucous membranes with or without gloves
15 after handling Camera Mounts, as well as direct and indirect hand to mouth contact,
16 hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter
17 emanating from the Camera Mounts during use, as well as through environmental
18 mediums that carry the DEHP once contained within the Camera Mounts.

19 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations
20 of Proposition 65 as to Camera Mounts have been ongoing and continuous, as
21 Defendants engaged and continue to engage in conduct which violates Health and
22 Safety Code Section 25249.6, including the manufacture, distribution, promotion, and
23 sale of Camera Mounts, so that a separate and distinct violation of Proposition 65
24 occurred each and every time a person was exposed to DEHP by Camera Mounts as
25 mentioned herein.

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1 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Camera Mounts, pursuant to
6 Health and Safety Code Section 25249.7(b).

7 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

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10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against BEST BUY,
12 BESTBUY.COM, BEST BUY STORES, BBY and DOES 11-20 for Violations of
13 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
14 (Health & Safety Code, §§ 25249.5, et seq.))**

15 **Go Pro Accessories II**

16 39. Plaintiff repeats and incorporates by reference paragraphs 1 through 38 of this
17 complaint as though fully set forth herein.

18 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Suction Cups (“Suction Cups”), including but not
20 limited to: “SUCTION CUP;” “GOPRO;” “Made in China;” “GoPro, Inc.,”
21 “gopro.com/patents;” “3000 Clearview Way, San Mateo, CA 94402;” “SKU#:
22 AUCMT-302;” “120119P;” “8 18279 01069 5”

23 41. Suction Cups contain DEHP.

24 42. Defendants knew or should have known that DEHP has been identified by the State of
25 California as a chemical known to cause cancer, developmental, and male reproductive
26 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
27 were also informed of the presence of DEHP in Suction Cups within Plaintiff’s notice of
28 alleged violations further discussed above at Paragraph 22.

- 1 43. Plaintiff’s allegations regarding Product concerns “[c]onsumer products exposure[s],”
2 which “is an exposure that results from a person’s acquisition, purchase, storage,
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
4 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.
5 Suction Cups is a consumer product, and, as mentioned herein, exposures to DEHP took
6 place as a result of such normal and foreseeable consumption and use.
- 7 44. Plaintiff is informed, believes, and thereon alleges that between March 17, 2017 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Suction Cups, which Defendants manufactured, distributed, or
10 sold as mentioned above, to DEHP, without first providing any type of clear and
11 reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold Suction Cups in California. Defendants know and
13 intend that California consumers will use Suction Cups, thereby exposing them to
14 DEHP. Defendants thereby violated Proposition 65.
- 15 45. The principal routes of exposure were through dermal contact, inhalation, and ingestion.
16 Persons sustain exposures by using, carrying, or handling the Suction Cups without
17 wearing gloves or by touching bare skin or mucous membranes with or without gloves
18 after handling Suction Cups, as well as direct and indirect hand to mouth contact, hand
19 to mucous membrane, trans-dermal absorption, or breathing in particulate matter
20 emanating from the Suction Cups during use, as well as through environmental
21 mediums that carry the DEHP once contained within the Suction Cups.
- 22 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations
23 of Proposition 65 as to Suction Cups have been ongoing and continuous, as Defendants
24 engaged and continue to engage in conduct which violates Health and Safety Code
25 Section 25249.6, including the manufacture, distribution, promotion, and sale of
26 Suction Cups, so that a separate and distinct violation of Proposition 65 occurred each
27 and every time a person was exposed to DEHP by Suction Cups as mentioned herein.

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1 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Suction Cups, pursuant to
6 Health and Safety Code Section 25249.7(b).

7 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9
10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

- 12 1. A permanent injunction mandating Proposition 65-compliant warnings;
13 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
14 3. Costs of suit;
15 4. Reasonable attorney fees and costs; and
16 5. Any further relief that the court may deem just and equitable.

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18 Dated: June 4, 2020

YEROUSHALMI & YEROUSHALMI*

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21 _____
22 Reuben Yeroushalmi
23 Attorneys for Plaintiff,
24 CONSUMER ADVOCACY GROUP, INC.